

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

In re: Shale Oil Antitrust Litigation

This Document Relates to:

ALL ACTIONS

No. 1:24-md-03119-MLG-LF

**DECLARATION OF KARIN B. SWOPE IN SUPPORT OF PLAINTIFFS' RESPONSE
TO KANSAS'S MOTION FOR LIMITED INTERVENTION**

I, Karin Swope, pursuant to 28 U.S.C. §1746, declare that the following is true and correct to the best of my knowledge and belief.

1. I make this declaration in support of Plaintiffs' Response to the State of Kansas's Motion for Limited Intervention. I have personal knowledge of the matters stated herein and, if called upon, I could, and would, competently testify thereto.

2. Attached as Exhibit 1 is a true and correct copy of email correspondence from Assistant Attorney General Nicholas Smith sent to co-lead counsel on April 8, 2025.

3. Attached as Exhibit 2 is a true and correct copy of a letter from co-lead counsel Michael Dell' Angelo sent to Attorney General Kobach on April 28, 2025.

4. Attached as Exhibit 3 is a true and correct copy of a letter from Assistant Attorney General Nicholas Smith sent to co-lead counsel on May 6, 2025.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of May, 2025, in Seattle, Washington.

/s/ Karin B. Swope
Karin Swope

Exhibit 1

From: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>

Sent: Tuesday, April 8, 2025 11:48 AM

To: Karin B. Swope <KSwope@cpmlegal.com>; Adam Zapala <AZapala@cpmlegal.com>; Ellen J. Wen <EWen@cpmlegal.com>; Jacob M. Alhadeff <JAlhadeff@cpmlegal.com>; 'sgoodger@midwest-law.com' <sgoodger@midwest-law.com>; Thomas E. Loeser <TLoeser@cpmlegal.com>; 'chris@doddnm.com' <chris@doddnm.com>
Cc: Jack, Melanie <Melanie.Jack@ag.ks.gov>; Steinhilber, Adam <Adam.Steinhilber@ag.ks.gov>; mdellangelo@bm.net; Patrick Coughlin <pcoughlin@scott-scott.com>; Patrick McGahan <pmcgahan@scott-scott.com>; Candice Enders <enders@bm.net>
Subject: RE: Forthcoming Limited Intervention by State of Kansas - In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF (D.N.M.) - Pls. City of San Jose & County of San Mateo

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Good afternoon Karin,

Unfortunately, we are unable to meet prior to filing our motion within our timeline. We will be filing our motion for intervention shortly. Our motion will note that the parties that did not indicate their position. We will add a footnote that states: "This statement is not intended to imply all of these parties have not engaged Kansas in conversation about its motion prior to this filing."

If you and co-lead counsel would like to discuss the scope of our motion for limited intervention after our filing, please advise, and we will send you some availabilities.

Warmest regards,
Nicholas

Nicholas C. Smith | Assistant Attorney General
Office of Attorney General Kris W. Kobach
Public Protection Division
120 SW 10th Avenue, 2nd Floor | Topeka, KS 66612
Direct: (785) 296-4350 | Fax: (785) 291-3699

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From: Karin B. Swope <KSwope@cpmlegal.com>

Sent: Tuesday, April 8, 2025 12:59 PM

To: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>; Adam Zapala <AZapala@cpmlegal.com>; Ellen J. Wen <Ewen@cpmlegal.com>; Jacob M. Alhadeff <JAlhadeff@cpmlegal.com>; 'sgoodger@midwest-law.com' <sgoodger@midwest-law.com>; Thomas E. Loeser <TLoeser@cpmlegal.com>; 'chris@doddnm.com' <chris@doddnm.com>
Cc: Jack, Melanie <Melanie.Jack@ag.ks.gov>; Steinhilber, Adam <Adam.Steinhilber@ag.ks.gov>; mdellangelo@bm.net; Patrick Coughlin <pcoughlin@scott-scott.com>; Patrick McGahan <pmcgahan@scott-scott.com>; Candice Enders <cenders@bm.net>
Subject: Re: Forthcoming Limited Intervention by State of Kansas - In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF (D.N.M.) - Pls. City of San Jose & County of San Mateo

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Nicholas,

Thank you for your response. My co-lead counsel and I would still like to meet and confer to understand the scope of your request to intervene in order to evaluate our response to your motion. Are you available to discuss your proposed motion sometime tomorrow? I'm available anytime tomorrow, Wednesday, except 11:30 am PT/1:30 pm CT.

Best, Karin.

From: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>

Sent: Monday, April 7, 2025 2:22 PM

To: Karin B. Swope <KSwope@cpmlegal.com>; Adam Zapala <AZapala@cpmlegal.com>; Ellen J. Wen <Ewen@cpmlegal.com>; Jacob M. Alhadeff <JAlhadeff@cpmlegal.com>; 'sgoodger@midwest-law.com' <sgoodger@midwest-law.com>; Thomas E. Loeser <TLoeser@cpmlegal.com>; 'chris@doddnm.com' <chris@doddnm.com>
Cc: Jack, Melanie <Melanie.Jack@ag.ks.gov>; Steinhilber, Adam <Adam.Steinhilber@ag.ks.gov>; mdellangelo@bm.net <mdellangelo@bm.net>; Patrick Coughlin <pcoughlin@scott-scott.com>
Subject: RE: Forthcoming Limited Intervention by State of Kansas - In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF (D.N.M.) - Pls. City of San Jose & County of San Mateo

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Good afternoon Karin,

Thank you for confirming your receipt. Unfortunately, I am not authorized to share an advance copy of our motion for limited intervention. However, I can provide you with additional information on our posture.

Kansas's intervention is limited to the political subdivision plaintiffs to challenge their jurisdiction and legal authority to bring their class allegations. We are intervening as of right to defend its sovereignty from usurpation from the political subdivision plaintiffs. To be clear, Kansas's position is that the political subdivisions may litigate on behalf of themselves, but our position is that the class allegations threaten Kansas's sovereignty.

Our filing here will be substantially similar to our posture and arguments in *Rodriguez, et al. v. Exxon Mobil Corp., et al.*, No. 4:24-cv-00803-SRB (W.D. Mo.). For your convenience (and in one document), I have attached our motion for limited intervention and proposed motion to dismiss, each with their briefs in support, for the *Rodriguez* case.

Finally, we are amenable to extending our deadline to advise us of your client's position to **tomorrow (April 8) at 1:00 PM CT**. We will notify the other parties of the same and provide them with the same information we have provided you.

Warmest regards,

Nicholas

Nicholas C. Smith | Assistant Attorney General

Office of Attorney General Kris W. Kobach

Public Protection Division

120 SW 10th Avenue, 2nd Floor | Topeka, KS 66612

Direct: (785) 296-4350 | Fax: (785) 291-3699

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From: Karin B. Swope <KSwope@cpmlegal.com>
Sent: Monday, April 7, 2025 3:16 PM

To: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>; Adam Zapala <AZapala@cpmlegal.com>; Ellen J. Wen <EWen@cpmlegal.com>; Jacob M. Alhadeff <JAlhadeff@cpmlegal.com>; 'sgoodger@midwest-law.com' <sgoodger@midwest-law.com>; Thomas E. Loeser <TLoeser@cpmlegal.com>; 'chris@doddnm.com' <chris@doddnm.com>

Cc: Jack, Melanie <Melanie.Jack@ag.ks.gov>; Steinhilber, Adam <Adam.Steinhilber@ag.ks.gov>; mdellangelo@bm.net; Patrick Coughlin <pcoughlin@scott-scott.com>

Subject: Re: Forthcoming Limited Intervention by State of Kansas - In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF (D.N.M.) - Pls. City of San Jose & County of San Mateo

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Hi Nicholas,

We received your email this morning. We do not understand your reason for intervening, and therefore are not able to state whether the motion is opposed by 3:30 pm CT today. We would like to meet and confer so that we can in good faith comply with D.N.M.LR-Civ 7.1(a). We are available tomorrow, April 8, flexible except not between 11am-12 pm PT/ 1-2 pm CT. Additionally, could you please send us a copy of your motion to intervene prior to our meet and confer?

Best, Karin.

From: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>

Sent: Saturday, April 5, 2025 12:15 PM

To: Adam Zapala <AZapala@cpmlegal.com>; Ellen J. Wen <EWen@cpmlegal.com>; Jacob M. Alhadeff <JAlhadeff@cpmlegal.com>; Joseph Cotchett <JCotchett@cpmlegal.com>; Karin B. Swope <KSwope@cpmlegal.com>; 'sgoodger@midwest-law.com' <sgoodger@midwest-law.com>; Thomas E. Loeser <TLoeser@cpmlegal.com>; Vasti Montiel <VMontiel@cpmlegal.com>; 'chris@doddnm.com' <chris@doddnm.com>; 'mtt@marytorreslaw.com' <mtt@marytorreslaw.com>

Cc: Smith, Nicholas <Nicholas.Smith@ag.ks.gov>; Jack, Melanie <Melanie.Jack@ag.ks.gov>; Steinhilber, Adam <Adam.Steinhilber@ag.ks.gov>

Subject: Forthcoming Limited Intervention by State of Kansas - In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF (D.N.M.) - Pls. City of San Jose & County of San Mateo

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Good morning counsel,

The State of Kansas (“Kansas”) intends to file for limited intervention as of right as a party-defendant in *In Re: Shale Oil Antitrust Litigation*, Case No. 1:24-md-03119-MLG-LF (D.N.M.). Kansas’s intervention is narrowly targeted toward the political subdivision plaintiffs (or, governmental entity plaintiffs).

Pursuant to D.N.M.LR-Civ 7.1(a), please advise us of your client’s position on our motion for limited intervention no later than 3:30 PM CT today. Thank you.

Warmest regards,

Nicholas

Nicholas C. Smith | Assistant Attorney General

Office of Attorney General Kris W. Kobach

Public Protection Division

120 SW 10th Avenue, 2nd Floor | Topeka, KS 66612

Direct: (785) 296-4350 | Fax: (785) 291-3699

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any protection, privilege, or immunity. Please note also that the Kansas Open Records Act provides that public records, including correspondence to me via e-mail, may be subject to disclosure unless otherwise protected by law.

Exhibit 2



MICHAEL DELL'ANGELO
EXECUTIVE SHAREHOLDER & GENERAL COUNSEL
d 215.875.3080 **m** 610.608.8766 | mdellangelo@bm.net

April 28, 2025

Via Electronic Mail

Office of the Attorney General of Kansas
The Honorable Kris W. Kobach
120 SW 10th Ave, 2nd Floor
Topeka, KS 66612-1597

Re: *IN RE: SHALE OIL ANTITRUST LITIGATION*
Case No. 1:24-md-03119-MLG-LF (D.N.M.)

Dear Attorney General Kobach:

I write in my capacity as interim co-lead counsel on behalf of Plaintiffs in the above-captioned litigation, *see* Dkt. 83, regarding your pending Motion for Limited Intervention, Dkt. 153, filed April 8, 2025 ("Motion").

The two class definitions in the Consolidated Class Action Complaint (CCAC), Dkt. 86, filed January 10, 2025, at issue in Kansas's Motion are:

1. A Class of end-payors seeking injunctive relief under Federal Rules of Civil Procedure 23(a), (b)(1), and (b)(2), defined as:

All persons, governmental and non-governmental entity end purchasers of crude oil derivative fuel products in the United States from January 1, 2021 and until present.

CCAC ¶248.

2. A Class of end-payors seeking damages and injunctive relief under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and various state laws, defined as:

All persons, governmental and non-governmental entity end purchasers of crude oil derivative fuel products in Arkansas, Alabama, Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon,



Kansas Attorney General Kris Kobach
April 28, 2025
Page 2

Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and/or Wisconsin from January 1, 2021 and present.

CCAC ¶249.

From these definitions, Kansas in its Motion argues Plaintiffs seek to “recover losses on behalf of themselves and the general public, all States, all agencies and all political subdivisions of the States.” Motion at 5.

As will be clear from Plaintiffs’ forthcoming opposition to the Motion, Plaintiffs believe concerns regarding the specific contours of Plaintiffs’ proposed class definition(s) are appropriately addressed at class certification, where they can be considered by the Court under the framework of Fed. R. Civ. P. 23. Notwithstanding this, I write to confirm that Plaintiffs have never intended to seek certification of any class in this case that includes State or federal entities. Further, Plaintiffs are willing to represent to you that we will not do so in any class certification motion in this case.

Please consider this in deciding whether to withdraw your motion, rather than filing a reply brief on June 3, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Dell'Angelo".

Michael Dell'Angelo

Exhibit 3



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

KRIS W. KOBACH

ATTORNEY GENERAL

MEMORIAL HALL
 120 SW 10TH AVE., 2ND FLOOR
 TOPEKA, KS 66612-1597
 (785) 296-2215 • FAX (785) 296-6296
 WWW.AG.KS.GOV

May 6, 2025

Michael Dell'Angelo
 Berger Montague P.C.
 1818 Market Street, Suite 3600
 Philadelphia, Pennsylvania 19103

Via Electronic Mail only
 mdellangelo@bm.net

**RE: *In Re: Shale Oil Antitrust Litigation, Case No. 1:24-md-03119-MLG-LF*
 (D.N.M.)**

Dear Mr. Dell'Angelo:

We have reviewed your April 28 letter in which you state the Plaintiffs “never intended to seek certification of any class in this case that includes State or federal entities” and request the State of Kansas withdraw its motion for limited intervention. Additionally, you provide assurances that Kansas’s concerns will be resolved at the class certification stage (*i.e.*, by excluding State and federal entities).

The Plaintiffs are responsible for what they plead. *Newtok Vill. v. Patrick*, 21 F.4th 608, 616 (9th Cir. 2021) (“A plaintiff is the master of his complaint and responsible for articulating cognizable claims.”). Despite your assurances otherwise, the pleadings do not exclude State and federal entities. Absent intervention, Kansas has no other choice to protect its interests, claims, and sovereignty—including the legal interests of its political subdivisions. Furthermore, your letter does not address many of our concerns raised in our proposed motion to dismiss. Even if Plaintiffs excluded State and federal entities from its class allegations, Kansas would still have grave concerns about its interests in this matter. *See, e.g.*, Doc. 153 at 10-12; Doc. 153-1 at 3-4, 36-37.

We look forward to reviewing your opposition response.

Sincerely,

Nicholas Smith
 Assistant Attorney General